

# Memorandum

DATE: JUN 28 2006

REPLY TO  
ATTN OF: EM-60 (Dr. James Shuler, 301-903-5513)

SUBJECT: Interpretation of Department of Energy-DOE O 460.1B

TO: John V. Iuculano, National Nuclear Security Administration, Office of  
Secure Transportation

The Office of Secure Transportation (OST) operations, described in your request, are performed by Government Contractors and therefore subject to Department of Transportation Hazardous Materials Regulations (DOT HMR) regulations while in commerce. If the government contractors are transporting hazardous materials to and from sites and these material will be used during the training or kept by the sites as supplies, then this is consider transporting hazardous materials in commerce and is subject to the DOT HMR requirements. Explosives/ammunition they are cared for operational purposes by the OST teams, are in use, not being transported, and are not subject to the HMR.

The Department of Energy (DOE) Order 460.1B (the Order), and its implementation guide (DOE G 460.1-1) addresses onsite and offsite transportation safety and applies to DOE/National Nuclear Security Administration (NNSA) Elements shown in Attachment 1 of the Order (e.g., NNSA).

From the perspective of the Order, "Offsite is any area within or outside a DOE site to which the public has free and uncontrolled access; onsite is any area within the boundaries of a DOE site or facility to which access is controlled." These terms, "offsite" and "onsite," are consistent with the DOT definitions of "in commerce" and "not in commerce."

The intent of the DOE Order was to assure that movements on DOE sites of hazardous materials met HMR when the public had uncontrolled access and that procedures were in place to provide equivalent protection when the access to the public was restricted. DOE onsite procedures/requirements under DOE O 460.1B, are the responsibility of the DOE site and are developed and implemented by the site. That site is responsible for providing guidance to OST for actions on that DOE site.

While the Order is specific to DOE sites and facilities, DOT interpretation letters and the HMR provide guidance with respect to the applicability of the Hazardous Materials Regulations (HMR) and working definitions. If the activity is performed on government property where access is controlled and unauthorized public access is prevented, the activity is "not in commerce" and is not subject to the HMR. Where public access is permitted on government property, the "in commerce" status can be changed to "not in commerce" by the blocking of the road(s) by the appropriate legal authority and thus controlling the public's

access. In the case of a public road maintained by the state passing through government property, the appropriate authority would be the state highway patrol.

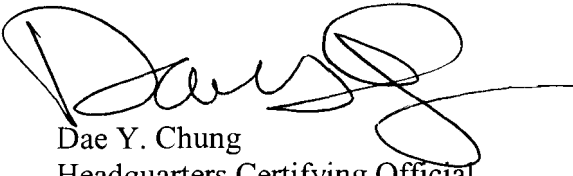
In your June 16<sup>th</sup> email, you stated:

“Since much of our training is conducted on Government owned facilities, (often other than DOE) I am requesting your guidance regarding the offsite/onsite language as defined as an area outside a DOE site. Although I continue to read this section to include "to which the public has free and uncontrolled access;" there has been some concern that our activities on DOD or other government controlled facilities may not meet the intent of this Order.”

The activity you describe is not explicitly addressed in the Order. In the terminology of the Order, your transportation activity is “offsite,” but not necessarily “in-commerce.” However, I can provide you with the following guidance based on the implicit intent of the Order.

1. On a federal government-owned site or facility to which the public has free and uncontrolled access, comply with the Offsite Safety requirements in the Order (Paragraph 4.a.).
2. On a federal government-owned site or facility with controlled access, comply with the Onsite Safety requirements in the Order (Paragraph 4.b.). That is, comply with the HMR or a site- or facility-specific Operations or Field Office approved Transportation Safety Document that describes the methodology and compliance process to meet equivalent safety for any deviation from the Hazardous Materials Regulations.
3. Once the OST personnel establish a controlled boundary or operate in one already established by the host site, explosives are issued and then considered in use. It is assumed that these training areas are restricted to public access. When this is the case, the operation is not in commerce and is not subject to the HMR or any equivalent. Conversely, training areas without established and controlled boundaries that cannot restrict public access are considered Offsite/in commerce.
4. When OST is operating on a non-DOE site where public access is controlled/denied by that site, OST may be required to meet that sites onsite transportation requirement.
5. OST should develop general onsite procedures to cover training operations when the site where the training is taking place does not have onsite procedures. These procedures would show equivalent safety to HMR. If the public access is controlled/denied during the training, the procedure could address the training process as being in use and not transportation and therefore not covered under HMR. These OST developed onsite procedures will likely mainly address the transportation of the materials on the site. In most cases, this will be part of the shipment off or on to the site, and these shipments would have been made under HMR.

The OST operations described by this email appear to me in full compliance with DOE O 460.1B and meet the Orders intent for onsite operations. If you have any further questions, please call Dr. James Shuler at (301) 903-5513.

A handwritten signature in black ink, appearing to read 'Dae Y. Chung', with a long horizontal line extending to the right.

Dae Y. Chung  
Headquarters Certifying Official  
Deputy Assistant Secretary for  
Safety Management and Operations  
Office of Environmental Management

cc: James Shuler, EM-60